IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.596 OF 2006

In

NOTICE OF MOTION NO.121 OF 2005

In

MISC. PETITION (LODGING) NO.691 OF 2005

In

PETITION NO.87 OF 2004

Faiyaz Ahamed Ajmatulla Shaikh : Appellant

(Orig. Respondent)

V/s.

Khairunissa Mohamed Arif & Anr. : Respondents

(Orig. Petitioners)

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Mr.Rahul Chitnis i/b. M/s.N.N.Vaishnawa & Co., for the appellant.

Mr.Ryan D'Souza with Mr.A.S.Rai for the respondents.

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CORAM : R.M.LODHA & S.A.BOBDE,JJ.

DATE : AUGUST 22, 2006.

P.C.

1. The counsel for the parties submit that without prejudice to the rights and contention of the parties in Misc. Petition, the order dated 21.7.2006 be set aside

and Misc. Petition (Lodging) No.691 of 2005 be restored for fresh consideration, in accordance with law.

2. The counsel for the parties also agree that since Misc. Petition (Lodging) No.691 of 2005 has been restored, the order passed in Notice of Motion No.121 of 2005 may also be set aside and the said Notice of Motion may be restored for fresh consideration by the learned Judge.

3. The counsel also agree that until consideration of the Notice of Motion by the learned Judge, the parties undertake to main status quo with regard to the estate of the deceased Mohammed Hafiz Kadri.

4. The submissions of the counsel for the parties are fair and reasonable.

5. Hence, the order:-

O R D E R

(i) The order dated 21.7.2006 passed in Misc. Petition (Lodging) No.691 of 2005 is set aside. The said Misc. Petition is restored to the file of the Testamentary and Intestate Jurisdiction of this

Court.

(ii) The order dated 21.7.2006 in Notice of Motion No.121 of 2005 is set aside. The said Notice of Motion is restored for fresh consideration by the learned Single Judge.

(iii) Until the hearing and final disposal of Notice of Motion No.121 of 2005, all parties are directed to maintain status quo in respect of the estate of the deceased.

(iv) We request the learned single Judge to hear and decide the Notice of Motion, as expeditiously as possible.

6. Appeal stands disposed of.

R.M. LODHA, J.

S.A. BOBDE, J.